(3)

(4) 18-2006

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR(C.G.)

SECOND APPEAL NO. 164 OF 2006 Single Bench

APPELLANT : Uma Bai, aged about 60 years, Wife of Shri Parmanand Sahu, Resident of Village Parsiya, Tahsil Nagri, District Dhamtari (C.G.).

PLAINTIFF

VERSUS

RESPONDENTS : 1. Ghasnin Bai, Wife of Shri Jalam Singh sahu;

DEFENDANTS

2. Jalam Singh, Son of Shri Sakharam Sahu;

3. Narottam Lal Son of Shri Govind Singh Sahu;

All Resident of Village Parsiya, Tahsil Nagri, District Dhamtari (C.G.).

4. Phulkunwar Bai, aged about 70 years, Wife of Shri Laxman Singh Sahu, Resident of Purani Basti Kotpara, Nagri, Tahsil Nagri, District Dhamtari (C.G.).

5. The State of Chhattisgarh, Through: The Collector, District Dhamtari (C.G.).

P.R.No. 1092/06 Presented by Shri S.P. Sahu dated 19/4/06

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SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE, 1908

(22)

HIGH COURT OF CHHATTISGARH, BILASPUR

SECOND APPEAL NO. 164/2006

Uma Bai

Vs.

Ghasnin Bai and others

Appearance:
Shri P.P. Sahu, Counsel for the appellant.

Oral Order
(22.06.2006)

SUNIL KUMAR SINHA, J.

(1) This is the plaintiff's second appeal filed u/s 100 of the Code of Civil Procedure.

(2) The brief facts are that the suit lands were the self-acquired property of one Sukhlal who was husband of original plaintiff n.1 namely Lalesar Bai and father of plaintiff no.2 Uma Bai. Sukhlal executed a registered sale deed dated 03.9.1991 in favour of defendant no.1 Ghasnin Bai, for a consideration of Rs.21,000/-. Sukhlal died on 17.4.1991. His two successors namely Laleshar Bai and Uma Bai, plaintiffs, challenged the sale deed on account of fraud and non-payment of consideration. It was pleaded by them that in fact, Sukhlal has not executed the said sale deed and no consideration was received by him. The defendants denied the claim of plaintiffs. The trial Court dismissed the suit holding that a valid sale deed was executed by Sukhlal in favour of the purchaser and no fraud was played against him. Against the said judgment and decree passed by the trial Court, defendant no.2, the appellant herein, filed an appeal before the lower appellate Court. The lower appellate Court also dismissed the appeal and confirmed the judgment and decree passed by the trial Court. It is against this judgment and decree

passed by the lower appellate Court, the appellant/plaintiff no.2 has filed this second appeal.

(3) Learned counsel for the appellant argues that the sale-deed was obtained by fraud as the seller was not in a fit mental condition on the date of execution of the sale-deed and the consideration of the sale was also not paid to the seller.

(4) I have gone through the records of the courts below. The courts below, after going through the evidence ,have recorded a finding that it was not established that the seller was not in a fit mental condition to execute the sale-deed and further the consideration was not paid to him. There appears to be no perversity in the findings recorded by the two courts below. More-over, the validity of the sale-deed was attacked on account of fraud and want of consideration by the two plaintiffs who were admittedly not the parties to the transaction. As held by M.P. High Court in the matter of ***Sunderlal V. Anupkunwarbai, 1960 M.P.L.J. Note No.154***, the attack on the sale deed on the ground that it was obtained by fraud cannot be made by one who was not a party to the transaction. Under section 19 of the Contract Act, fraud makes the sale-deed voidable at the instance of the party on whom fraud has been practised. The contract is otherwise good. It was thus open only to the party to the transaction to challenge the same, on account of fraud and want of consideration.

(5) This appeal does not involve any substantial question of law. The same is dismissed at the motion stage itself.

Sd/-
Sunil Kumar Sinha
Judge

Rao